

In Re: Jim Carter)
Ward 73, Block 105, Parcel 30) Shelby County
Residential Property)
Tax year 2005)

top of the page. You will be notified of a hearing date in due course.

The property owner may request a hearing before the full County Board of Equalization **but if no request is submitted within 10 days, the hearing officer's recommendation will become final....**

Final actions of the County Board of Equalization may be appealed to the State Board of Equalization within 45 days from the date of final action by the County Board...[Emphasis added.]

At the hearing before the undersigned administrative judge, Mr. Carter testified that he was "in disbelief" when he received the county board's letter. It was his understanding that the hearing officer actually recommended a value of \$34,000 for the subject property. Mr. Carter telephoned the office of the county board several times over "an extended period" in an attempt to confirm that there had been a mistake. He finally succeeded in contacting the county board's executive director, who told Mr. Carter that he (David Newsom) had personally reviewed the hearing officer's case file and verified the \$55,800 value.

Meanwhile, unfortunately, Mr. Carter never signed and returned the form that would have assured him of the opportunity to contest the valuation of the subject property before the full county board. Having no other possible recourse, he filed this appeal with the State Board.

Tenn. Code Ann. section 67-5-1412(e) provides (in relevant part) that:

Appeals to the state board of equalization from action of a local board of equalization must be filed before August 1 of the tax year, **or within forty-five (45) days of the date notice of the local board action was sent**, whichever is later. [Emphasis added.]

In this case, application of the quoted law is somewhat complicated by the fact that the county board's letter of February 21, 2006 did not purport to be its *final* action on Mr. Carter's complaint. Rather, under the express terms of that letter, the stated "hearing officer value" (\$55,800) only became the county board's final decision when the taxpayer failed to exercise his ten-day right of appeal in writing.

Yet even assuming (without deciding) that a property owner who is aggrieved by the recommendation of a county board-appointed hearing officer may bypass the county board itself and appeal directly to the State Board, Mr. Carter's appeal clearly appears to be untimely. The county board's determination of his complaint became final on or about March 6, 2006; and this appeal to the State Board was filed well over 45 days later. As the Assessment Appeals Commission recently observed in another instance where the administrative judge had raised a jurisdictional issue *sua sponte*:

[W]e find the parties cannot waive or confer jurisdiction, that the appeal was indeed filed late under established rules for calculation of time, and that the Board does not have equitable power to ignore the deadlines to appeal. The Board has been advised of the general principles regarding its jurisdiction in an opinion of the state Attorney General (OAG 92-62).

Homelife Oxygen, LLC (Shelby County, Tax Year 2001, Final Decision and Order, February 7, 2006), p. 2. See also Metropolitan Life et al. (Shelby County, Tax Year 1991, Final Decision and Order, May 4, 1995).

Order

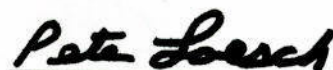
It is, therefore, ORDERED that this appeal be dismissed for lack of jurisdiction.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 28th day of August, 2006.



PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Jim Carter
Tameaka Stanton-Riley, Appeals Manager, Shelby County Assessor's Office